IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.123 OF 2007
IN
WRIT PETITION NO. 1932 OF 2004

M/s Boolani Engineering Corporation ...Petitioners.

V/s

Municipal Corporation of Greater Mumbai & Ors. ...Respondents.

Mr. K.K. Singhvi with Ms. Archana Joshi for the applicants/respondents - Municipal Corporation in support of the Notice of Motion.

Mr. R.M. Nakhwa i/b Mr. Vasant Dhavan for the Petitioners.

ALONG WITH

NOTICE OF MOTION NO. 107 OF 2007

IN

WRIT PETITION NO.2245 OF 2004

Industrial Equipment Manufacturing Company. .....Petitioners.

V/s

M.C.G.M. & Ors. .....

Respondents.

Mr. K.K. Singhvi with Ms. Archana Joshi for the applicant/Respondents - Municipal Corporation in support.

Mr. R.M. Nakhwa i/b Mr. Vasant Dhavan for the Petitioners.

ALONGWITH

WRIT PETITION NO.2029 OF 2004

M/s Boolani Engineering
Corporation ....Petitioners.

V/s

Municipal Corporation of
Greater Mumbai. ....Respondents.

Mr. R.M. Nakhwa i/b Mr. Vasant Dhavan for the Petitioners.

Mr. K.K. Singhvi with Ms. Archana Joshi for the Respondents - Municipal Corporation.

CORAM: V.M. KANADE, J.
DATE : 11th April, 2007.

P.C.:

1. This common order is passed in Notice of Motion No. 123 of 2007 in Writ Petition No.1932 of 2004, Notice of Motion No. 107 of 2007 in Writ Petition No.2245 of 2004 as also in Writ Petition No. 2029 of 2004 in which no Notice of Motion has been taken out.

2. The Notice of Motion No.123 of 2007 is taken out by the Municipal Corporation in Writ Petition No.1932 of 2004 for vacating the interim relief which has been granted by this Court by order dated 17th January, 2005 and the Notice of Motion No 107 of 2007 is also taken out by the Municipal Corporation in Writ Petition No.2245 of 2004 for vacating the interim relief which was granted by this Court by order dated 26th October, 2004. These Notices of Motion are taken out in view of the Division Bench Judgment of this Court dated 27th March, 2006 in Municipal Corporation of Greater Mumbai v. Dalamal Tower Premises Co-operative Society Limited reported in **2006 (3) Bom. C.R. 557** in which similar issue came to be decided in favour of the Municipal Corporation and the revised assessment was upheld.

3. Against the said judgment and order, Special Leave Petition was filed before the Supreme Court and leave to appeal was granted and the following interim directions were issued:-

> "The recovery on the basis of revised enhanced assessment from the appellants is stayed subject to the condition that besides the undisputed amount, the appellants also deposit with the respondent - Corporation fifty per cent of the difference between the assessment and the revised enhanced assessment within a period of six weeks and also give an undertaking that in case the appeal is dismissed and revised assessment is upheld, the balance amount would be paid with interest at the rate of 6-1/4%. Likewise, the Principal Assessor and Collector, on behalf of the Commissioner and the Corporation, will file an undertaking that in case the appeals are allowed and revised assessment is set aside, fifty per cent of the payment made on the basis of the revised assessment would be refunded to the appellants with the same rate of interest i.e. 6-1/4%."

4. In view of the order that has been passed by the Supreme Court on 11th September, 2006 in the aforesaid

case, appropriate orders will have to be passed in this case modifying the interim orders dated 17th January, 2005 and 26th October, 2004 respectively.

5. Under the circumstances, the said orders dated 17th January 2005 and 26th October, 2004 are modified and it is directed that Petitioners to deposit with the Respondent - Corporation 50% of the difference between the assessment and the revised enhanced assessment within a period of six weeks and Petitioners also to give an undertaking that in case the appeal is dismissed and the revised assessment is upheld, the balance amount would be paid with interest @ 6-1/4% per annum. Similarly, the Principal Assessor and Collector on behalf of the Commissioner & Corporation will file an undertaking that in case the appeals are allowed and revised assessment is set aside 50% of the payment made on the basis of revised assessment will be refunded to the Petitioners with the same rate of interest i.e. 6-1/4% per annum.

6. These Petitions are filed by one of the unit holders of

Respondent No.5 - Society and it is submitted that the Corporation has not given particulars regarding breakup of respective unit. The learned Counsel appearing on behalf of the Corporation has submitted that the said breakup has already been submitted today to the Counsel appearing on behalf of the Petitioners. Without prejudice to the rights and contentions of the Petitioners in respect of the breakup which is given, the Petitioners shall deposit the amount as per the breakup given by the Corporation's Counsel. It is further clarified that if, in the meantime, the Respondent No.5 - Society has paid the assessment charges on behalf of the Petitioners and if a proper receipt is shown by the Society then the same amount may be adjusted towards the dues of the Petitioners.

7. The Notices of Motion are accordingly disposed of.

8. Place these Petitions on board along with the group of Petitions on 19/7/2007.

(V.M. KANADE, J.)